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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,554	01/16/2002	Andrew Baker	53394.000581	1808

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EXAMINER

KIDWELL, MICHELE M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/046,554

Applicant(s)

BAKER, ANDREW

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2004 and 01 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 25-29 and 49-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 and 30-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>041102</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election of Species 4 in the reply filed on July 29, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 25 – 29 and 49 – 53 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 29, 2004.

Claim Objections

Claim 33 is objected to because of the following informalities: the word "leas" is misspelled in line 2. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 14, 17 – 38 and 41 – 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Chmielewski (US 6,068,620).

As to claims 1 and 30, Chmielewski discloses an absorbent article having a longitudinal dimension and a lateral dimension comprising: a top sheet (30); a back sheet (32); and a multi-component absorbent core composite (34) disposed between the top sheet and the back sheet; wherein the multi-component absorbent core composite includes at least a first (350) and second (352) different absorbent core units, where at least the first absorbent core unit is comprised of a mixture of tow fibers and superabsorbent polymer (SAP) as set forth in col. 11, line 47 to col. 12, line 9.

The recited steps of the method claim are inherently included in the rejection of claim 1 as shown in figures 3 – 4.

With reference to claim 2, Chmielewski discloses an absorbent article whereby the article has a first waist region (22), a second waist region (24) longitudinally opposed to the first waist region, and a crotch region (26) between the first and second waist regions, the article further comprising at least one fastening element attached to a lateral edge of the first waist region (40); and one or more target devices attached to the article in the second waist region, where at least one fastening element and the one or more target devices are capable of attaching to one another, the one or more target devices being located so that the first waist region and second waist region of the garment may be joined to one another to secure the garment on a wearer as set forth in col. 5, lines 24 – 51 and in figure 1.

Regarding claim 3, Chmielewski discloses an absorbent article further comprising elastic leg gathers (36) comprising one or more elastic materials disposed adjacent a

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lateral edge of the crotch region, and standing leg gathers disposed on the top sheet adjacent the lateral edge of the crotch region as set forth in col. 7, line 59 to col. 8, line 6 and in figure 1.

As to claim 4, Chmielewski discloses an absorbent article wherein the at least one fastening element comprises a hook portion of a hook and loop fastener and the one or more target devices comprise the loop portion of a hook and loop fastener as set forth in col. 5, lines 41 – 42.

With respect to claim 5, Chmielewski discloses an absorbent article wherein the at least one fastening element is an adhesive tape and the one or more target devices comprise a tape receiving surface as set forth in col. 5, lines 41 – 42.

With reference to claim 6, Chmielewski discloses an absorbent article wherein the at least one fastening element is comprised of a pair of laterally extending tabs disposed on the lateral edges of the first waist region, whereby the laterally extending tabs each include at least one fastening element in col. 5, lines 41 – 42 and in figure 1.

Regarding claims 7 and 31, Chmielewski discloses an absorbent article wherein at least one additional layer (344) is disposed between the multi-component absorbent core composite and the top sheet as set forth in figures 3 – 4.

As to claims 8 and 32, Chmielewski discloses an absorbent article wherein the at least one additional layer (344) is selected from the group consisting of a fluid acquisition layer, a distribution layer, an additional fibrous layer optionally containing SAP, a wicking layer, a storage layer, and combinations and fragments thereof as set forth in col. 10, lines 16 – 18.

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With respect to claims 9 and 33, Chmielewski discloses an absorbent article wherein one of the absorbent core units (350) includes at least one additional layer (350b) as set forth in col. 9, line 45 to col. 10, line 7 and in figure 3.

As to claims 10 and 34, Chmielewski discloses an absorbent article wherein the at least one additional layer is selected from the group consisting of a fluid acquisition layer, a distribution layer, an additional fibrous layer optionally containing SAP, a wicking layer, a storage layer, and combinations and fragments thereof as set forth in col. 9, lines 46 – 49.

Regarding claims 11 and 35, Chmielewski discloses an absorbent article wherein the absorbent core unit that includes tow and SAP is a multi-layered absorbent core unit including two outer tissue layers (col. 9, line 45 to col. 10, line 7) and a central layer that comprises from about 50% to about 95% by weight super absorbent polymer (SAP) as set forth in col. 10, lines 11 – 15.

The SAP efficiency is considered a product by process limitation. The applicant is reminded that:

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted)

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Further, since the absorbent core unit of Chmielewski meets the claimed limitations regarding the tow, the SAP percentages and the provision of having two outer tissue layers, the SAP efficiency would be inherently identical to that claimed.

As to claims 12 and 36, Chmielewski discloses an absorbent article wherein the central layer comprises tow fibers selected from the group consisting of cellulose acetate fibers, rayon fibers, LYOCELL fibers, polyacrylonitrile fibers, cotton fibers and cotton linter fibers as set forth in col. 11, line 54 to col. 12, line 9.

With reference to claims 13 and 37, Chmielewski discloses an absorbent article of claim 11, wherein the central layer further comprises up to 10% by weight fluff wood pulp fibers as set forth in col. 11, line 54 to col. 12, line 9.

Regarding claims 14 and 38, Chmielewski discloses an absorbent article wherein the central layer further comprises particulate additives as set forth in col. 11, lines 47 – 52.

As to claims 17 and 41, Chmielewski discloses an absorbent article wherein the at least one second absorbent core unit is comprised of the same materials as the first absorbent core unit in differing amounts as set forth in col. 11, lines 38 – 46.

With reference to claims 18 and 42, Chmielewski discloses an absorbent article wherein both the first and the at least one second absorbent core unit comprise at least fiber and SAP, and the at least one second absorbent core unit has a different SAP: fiber ratio than the first absorbent core unit as set forth in col. 9, lines 45 – 65 and in col. 12, lines 59 – 62.

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With respect to claims 19 and 43, Chmielewski discloses an absorbent article wherein the at least one second absorbent core unit is comprised of at least one different material than the first absorbent core unit as set forth in col. 11, lines 42 – 46.

As to claims 20 and 44, Chmielewski discloses an absorbent article wherein the at least one second absorbent core unit includes a different fibrous component than the first absorbent core unit as set forth in col. 11, lines 42 – 46.

With reference to claims 21 and 45, Chmielewski discloses an absorbent article wherein the at least one second absorbent core unit does not include a fibrous component as set forth in col. 12, lines 35 – 44.

With reference to claims 22 and 46, Chmielewski discloses an absorbent article where the at least one second absorbent core unit includes a different SAP than the first absorbent core unit as set forth in col. 9, line 55 to col. 10, line 5; col. 10, lines 29 – 35 and in figure 3.

As to claims 23 and 47, Chmielewski discloses an absorbent article wherein the at least one second absorbent core unit includes a different amount of adhesive than that used in the first absorbent core unit as set forth in col. 18, line 66 to col. 19, line 2.

As to claims 24 and 48, Chmielewski discloses an absorbent article wherein the first absorbent core unit is disposed between two second absorbent core units as set forth in figures 3 – 4.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15 – 16 and 39 – 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chmielewski (US 6,068,620).

The difference between Chmielewski and claim 15 is the provision that the tow is a cellulose ester tow.

Absent a critical teaching and/or unexpected result, the examiner contends that the claimed limitation is an obvious matter of design choice that does not patentably distinguish the claimed invention from the prior art.

With reference to claim 16, see col. 11, lines 64 – 67.

Regarding claims 39 – 40, see the rejection of claims 15 – 16.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday - Friday, 5:30am - 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 571-272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Examiner
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